80-81

Supreme Court, U. S.
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In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
PETITIONER

Vs.

EPIFANIA PEREZ
RESPONDENT

DOCKET NUMBER: 80-81
ON WRIT OF CERTIORARI FROM
THE SUPREME COURT OF PUERTO RICO

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In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
Petitioner

Vs.

EPIFANIA PEREZ
Respondent

DOCKET NUMBER:
On writ of Certiorari from the Supreme Court
of Puerto Rico

OPPOSITION TO WRIT OF CERTIORARI TO THE HONORABLE COURT:

Now, comes Respondent before that Honorable Supreme Court, in Opposition to Writ of Certiorari filed by Petitioner on June 14, 1980. And most respectfully states:

I- OPINIONS DELIVERED BY THE COURT BELOW:

1. One January 26, 1977, Petitioner was held in contempt to court by the Superior Court, at Bayamón, Puerto Rico. Opinion not reported. (A-I).
2. On August 3, 1977, judgement rendered against Petitioner, by Superior Court at Bayamón, Puerto Rico ordering him to vacate the land and refrain from disturbing Respondent's rights. Opinion not reported.
3. On February 20, 1979, after a hearing to determine if Petitioner had been duly summoned, Superior Court sustained and reaffirmed judgement rendered August 3, 1977. Not reported.
4. On August 16, 1979, Superior Court, at Bayamón, Puerto Rico, denied motion requesting to stay Order to Vacate filed by Petitioner. Not reported. (A-II).
5. On October 18, 1979 the Supreme Court of Puerto Rico denied the Writ of Certiorari requested by Petitioner to review Superior

Court decision of February 20, 1979. Opinion not reported.

6. On December 20, 1979 the Supreme Court of Puerto Rico denied appeal to review decision of the Superior Court not to stay order to vacate which would come in effect December 7, 1979. This opinion is not reported. (A-III).
7. On February 28, 1980 the Superior Court of Puerto Rico denied motion to strike decree and order of August 3, 1977. This opinion is not reported.
8. On March 12, 1980 the Superior Court of Puerto Rico denied Motion to Reconsider Resolution of February 28, 1980. Opinion not reported.
9. On April 17, 1980 the Supreme Court of Puerto Rico denied the Writ of Review filed by Petitioner to revise Superior Court decree of February 28, 1980. Opinion not reported. (A-IV).
10. On May 15, 1980, Supreme Court of Puerto Rico denied Motion for Reconsideration of Supreme Court's decision of April 17, 1980. Opinion not reported.
11. On May 22, 1980, Supreme Court of Puerto Rico denied motion from Petitioner to retain mandate. Opinion not reported. (A-V).
12. On June 4, 1980, Superior Court of Puerto Rico denied request of Petitioner of Stay of Order to Vacate. Opinion not reported. (A-VI).

13. On June 12, 1980, Supreme Court of Puerto Rico denied Petitioner's Motion for Reconsideration based on new arguments. Opinion not reported. (A-VIII).
14. On June 12, 1980, Supreme Court of Puerto Rico denied Petitioner's motion requesting translation and certification of opinions and orders in the case. Opinion not reported.

II- CONCISE STATEMENT OF THE GROUNDS ON WHICH JURISDICTION SHOULD BE DENIED

1. Case in question falls under the laws of the Commonwealth of Puerto Rico.
2. There is no diversity of citizenship between the parties.
3. The case in question is solely based in a controversy between parties (private parties) contemplated under local substantive and procedural law.
4. Due process of law was guaranty to Petitioner under Article II, Section 7, of the Constitution of the Commonwealth of Puerto Rico.
5. If there was a federal question, which we doubt it, (Violation of the 5th and 14th Ammendments of the Constitution of Unites States of America), the same was not timely or properly raised.

III- CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

1. Rule 4.2 of Civil Procedure which corresponds to Federal Rule 4(b) of Civil Procedure. (A-VIII).
2. Rule 4.4 of Civil Procedure corresponding to Rule 4(d) of Civil Procedure (Federal Rules of Civil Procedure). (A-VIII).
3. Rule 8 of Civil Procedure which corresponds to Rule 10 of the Rules of Civil Procedure (Federal). (A-VIII).
4. Rule 10.1 of Civil Procedure corresponding to Rule 12(a) of the Federal Rules of Civil Procedure.
5. Rule 45.1 of Civil Procedure equivalent to Rule 55(a) of the Federal Rules of Civil Procedure. (A-VIII).
6. Rule 49.2 of Civil Procedure similar to Rule 60(b) of Federal Rules of Civil Procedure. (A-VIII).
7. Article II, Section 7, of the Constitution of the Commonwealth of Puerto Rico.
8. Law 600, approved by 81st. Congress on July 3, 1950.

IV- QUESTIONS PRESENTED FOR REVIEW

A)- **Was Petitioner duly summoned?**

B)- **Was Petitioner denied due process of law under the laws and the Constitution of the Commonwealth of Puerto Rico?**

C)- **Does that Supreme Court of the United States have jurisdiction in the case?**

V- STATEMENT OF THE CASE

Complaint against Petitioner was filed at Superior Court of Puerto Rico in Bayamon on October 21, 1976 under case Civil No. 76-2974. Summons were issued by the clerk of Court. Petitioner was served with the summons and copy of the complaint on November 13, 1976. Upon failure to contest complaint or enter any pleading, Petitioner was held in contempt to court and judgement enter against him on August 3, 1977. (See Page 39, of Petition, Appendix I of Petitioner). Lower court issue Order to Vacate on March 27, 1978 with the corresponding mandate to the court's marshall. (See Appendixes II and III, of Petitioner on Pages 41 and 43 of Petition). A year and twenty nine days, after judgement adverse to Petitioner was rendered and facing eviction, is the first time he comes before the court to question the validity of the judgement only. Lower court decided to set aside the judgement and scheduled a hearing after which judgement of August 3, 1977 was sustained. (See Appendix IV, of the Petitioner on Page 46 of the Petition), by way of the Resolution dated February 20, 1979. Petitioner filed a motion to reconsider and stay order to vacate, dated August 1, 1979, over five months after judgement was rendered on February 20, 1979 and the same was dismissed by the lower court, on August 13, 1979. Appeal by way of Certiorari was filed by Petitioner at the Supreme Court of Puerto Rico on September 24, 1979 and the same was dismissed by the Court on October 18, 1979. A third time Petitioner came before the lower court with a

motion to strike judgement rendered against him on August 3, 1977 on the grounds that the judgement was illegal because Respondent had committed fraud to the court. While a hearing set for the date of January 18, 1980 was pending, Petitionar appealed to the Supreme Court of Puerto Rico requesting that the court reversed the determination of the Superior Court. This appeal was dismissed on December 20, 1979. After the hearing of January 18, 1980 the court issued a Resolution dated February 28, 1980 and the judgement of August 3, 1977 remained in full force. (See Appendix V, of the Petitioner on Page 48 of the Petition). Dated March 7, 1980, for the fourth time, Petitioner filed a motion of reconsideration at the lower court to revise judgement of February 28, 1980. The motion was denied by the court below. Then on March 26, 1980, the Petitioner filed a writ of revision at the Supreme Court of Puerto Rico which was denied by the Court on April 17, 1980 and a motion of reconsideration dated May 1, 1980 was filed but denied by the Supreme Court on May 15, 1980. This was the fourth time Petitioner came before the Supreme Court. Not satisfied with the Supreme Court decisions, Petitioner once more and now for the fifth time, filed a motion to reconsider the whole matter based on alleged new reasons. The Court denied that motion on June 12, 1980. By the way, a motion of Petitioner, dated June 6, 1980, requesting the Supreme Court the Certification and Translation of Opinions and Orders in the case was also denied in the resolution issued on June 12, 1980. While litigating at the Supreme Court level, Respondent was also litigat-

ing at the Superior Court simultaneously. He filed a motion to stay order to vacate, which the lower court denied on June 4, 1980.

VI- FURTHER ARGUMENTS SUSTAINING DENIAL OF JURISIDCTION AND IN OPPOSITION TO THE ISSUANCE OF THE WRIT OF CERTIORARI

1. According to Rule 19, of the Supreme Court Rules, a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. This case does not involve a susbstantial federal question, nor there is a diversity of citizenship or is it contrary to decisions of that Honorable Court. As a controversy between private parties it falls and was decided purely under the provisions of the Rules of Civil Procedure, state laws and the Constitution of the Commonwealth of Puerto Rico. There is no conflict whatsoever with federal statutes or decisions of that Honorable Court or with applicable state laws.

Petitioner was duly summoned and served with copy of the complaint. He failed to answer the complaint or raised any defense which might assist him. After the lower court issue the order to vacate, and over a year's time from the date of the judgement, is that Petitioner comes before the court alleging that he had not been summoned or served with copy of the complaint, either under the name of Luis Santiago Ortega or that of Wilfredo Santiago Ortega, his real name. Court ordered a rehearing and held it on December 1978 and January 1979, after which judge-

ment of February 20, 1979 sustained and left in full force decision of August 3, 1977. (See Appendix IV of Petitioner, Page 46 of the Petition). With respect to wrongfully designating or indicating the name of a defendant in a civil action, the Supreme Court of Puerto Rico, rulled in the case of Colón Gandía Vs. Tribunal Superior, 1966, 93 DPR 225, the following:

> "Summoned in a case the person interested to implead or his authorized agent to that respect, the designation in an inapproriate form of the name of that person constitutes a mere technical error that may be corrected by the court." (Our translation.

Petitioner's name in the original complaint was indicated as Luis Santiago Ortega, known as Guiso. Under that name he was duly summoned and served with copy of the complaint. Failing to answer the complaint or to enter any allegations, he was held in contempt of court, and judgement rendered against him. Consequently order to vacate was issued. On September 1, 1978, a year and twenty nine days after judgement was rendered, Petitioner came before the court alleging that he was not the person indicated in the summons that his name was Wilfredo Santiago Ortega and hence, although he was living in the property, judgement should be reversed, because the court issued the judgement without jurisdiction over the person of the defendant. That was the only allegation made by the Petitioner. (See Appendix V of the Petitioner, specifically at Page 49 of the Petition). The lower court held a new hearing and denied the motion to reverse judgement, leaving in full force the judge-

ment of August 3, 1977. (See Appendix V, of the Petitioner, Page 48 of the Petition). The judicial pilgrimage of the case is well taken care of in the Resolution of the Superior Court dated February 28, 1980, (Appendix V of Petitioner), which clearly describes all the opportunities given to the Petitioner and summarizes his attitude (Last sentences of Appendix V to the Petitioner, Page 53 of the Petition) as follows:

> "The only thing that is clear from the evidence is that the defendant, whom for his negligent disregard when summoned and for his clear neglect and indifference to the judicial procedure, faces eviction, now tries to seek the covert of the court, which he disregarded when he continue building unlawfully. He forgets that in the implementation of justice such artifices as performed by him can not be justified." (Our translation).

Afterwards Petitioner started his judicial pilgrimage with different action both at the Superior Court and the Supreme Court of Puerto Rico. This time the Petitioner, as we have said, try to reopen the case by filing different causes of action. Practice condemned by the Supreme Court of Puerto Rico as stated in the case of Zambrana Vs. Tribunal Superior, 1971, 100 DPR 179, Page 181, and we quote:

> "The defense of res judicata in its aspect of fragmentation of a cause of action is applicable to all further claims between the same parties over the same matter. Avellanet Vs. Porto Rican Express, 64 DPR 693 (1945), Cruz Vs. Ortiz, 82 DPR 834 (1961). The purpose of this defense is to promote the conclusion of judicial controversies and avoid the continued hardships to a party with the suc-

> cessive filing of different claims related to the same matter."

An in Panamerican Match Inc. Vs. Sears, Roebuck and Co., 454 F2d 871 (1972) that Honorable Supreme Court, ruled on this same matter of fragmentation of causes of action within the same matter in which the claim was filed, thereby sustaining the doctrines established by the Supreme Court of Puerto Rico.

Petitioner was negligent in the exercise of his rights. He failed to raise all posible defenses, properly and timely. Instead of doing so, he prefer to questioned, later, the decisions of both the Superior and Supreme Courts, by claiming that the way in which the complaint was entitled and the solution of the case were in conflict and therefore judgement should be reversed. Also that Petitioner was deprived of the due process of law. With respect to the designation of the cause of action (What we may call title of the complaint) the Supreme Court of Puerto Rico in the case of Cruz Vs. Director de la Lotería, 1967, 94 DPR 260, stated the following and we quote:

> "No error is committed by a lower court while considering and injunction as a civil action and providing an adequate remedy to avoid damages to a plaintiff."

And in the case of Lebrón Velázquez Vs. Romero Barceló, 1974, 101 DPR 915, the Supreme Court of Puerto Rico, ruled:

> "The title given to a recourse should not restrain the court form providing a corresponding remedy."

Petitioner claims that the Supreme Court of Puerto Rico violated his rights under the the 5th and 14th Amendments of the United States Constitution, because he was denied a hearing. For the first time, after two years and almost ten months since judgement against him was rendered by the Superior Court on August 3, 1977, is that a Motion of Reconsideration stating the federal question, dated June 3, 1980, is filed. Definitely the federal question was not either timely or properly raised. Furthermore, the due process of law within Article II, Section 7, of the Constitution of the Commonwealth of Puerto Rico was fully at the disposal of the Petitioner. His failure to timely and properly raise objections or claim whatever rights he was entitled to , was his responsibility. He must bear the consequences of his negligent attitude as determined by the lower court in the Resolution issued on February 28, 1980. (See Appendix V of the Petitioner, Page 48 of the Petition). The due process clause, contained in the Constitution of the Commonwealth of Puerto Rico, has been interpreted by that Honorable Supreme Court of the United States, in the case of Figueroa Ruiz Vs. Delgado, 1966, 359 F. 2d 718, where the following was expressed, and we quote:

> "After the agreement and pursuant to P.L. 600 of the 81st. Congress, the interpretation and application of the guarantees of the due process of law of the Constitution of the Commonwealth of Puerto Rico is a prerogative of the Supreme Court of Puerto Rico."

This interpretation means that the Supreme Court of the United States of America acknowledges

the fact that constitutional matters within the scope of the Constitution of the Commonwealth of Puerto Rico are the responsibility of the Supreme Court of Puerto Rico and they will follow it, furthermore when there is not a federal question involved. That is, in order to assume jurisdiction, the federal question must have been brought to the consideration of the state's courts at he proper time and if there was a decision contrary to principles established by that Honorable Supreme Court then and only then jurisdiction will be assumed by the Court, when such claimed jurisdiction is based on an alleged federal question. Petitioner accepts (See II. Concise Statement of the Ground on Which Jurisdiction is Invoked, Page, 3, of the Petition) that on June 3, 1980, he filed a Motion of Reconsideration stating the federal question of violation of due process of law, before the Supreme Court of Puerto Rico. After the long and tedious pilgrimage of the case through both the Superior and the Supreme Courts of Puerto Rico, two years and ten months after the judgement of the Superior Court rendered on August 3, 1977 is the only and first time that Petitioner at the Supreme Court level raises the issue of a violation to the due process of law under the 5th and 14th Amendments of the U.S. Constitution. Such allegation as well as any other defenses available to the Petitioner should have been brought to the consideration of the Superior Court at the time the validity and legality of the summons was questioned. Therefore, litigating piecemeal constitutes a fragmentation of the case which both the Supreme Court of Puerto Rico and that Honorable Supreme Court of the United States had

determine constitutes Res Judicata. But perhaps the most important factor to consider is that the Supreme Court of the United States will have jurisdiction to review a State decision only if the federal point asserted as the basis for review was specially set up or claimed, of drawn in question. The record must disclose that the federal question was present in the case in the State court, and was presented to the State court for decision. It is not enough for counsel to think up some federal point after the last State court has acted. That is what happened in the case in question. The federal point was brought to the attention of the Supreme Court of Puerto Rico as a last stand with probably the intention to open the door through which they might step into the federal jurisdiction. But that attempt was to late, not timely or properly raised. Therefore jurisdiction and consequently the writ of certiorari should be denied. At this time we would like to make part of these Opposition to the Writ of Certiorari our arguments and allegations in the Opposition to Application for Stay of Order to Vacate, in those aspects which art pertinent to this opposition.

FOR THE ABOVE STATED REASONS, Respondent moves the Honorable Supreme Court of the United States of America to dismiss and denied the Writ of Certiorari on the basis of want of federal jurisdiction and award Respondent costs, interest, damages for delay and attorney's fees.

RESPECTUFULLY SUBMITTED.

Carolina, Puerto Rico, August 3, 1980.

ANTONIO CAJIGAS-LLAMAS
Cousel for Respondent
Rodríguez Oquendo esq. 2-B No. 142
Urb. José Severo Qui ones
Carolina, Puerto Rico 00630
Tel. 768-5450

PROOF OF SERVICE: I hereby certifies that three copies of the preceeding Opposition to Writ of Certiorari, has been forwarded to Counsel for Petitioner, María Dolores Fernós at her address Puerto Rico Legal Services, Inc., P.O. Box CM, Río Piedras, Puerto Rico, 00928.

ANTONIO CAJIGAS-LLAMAS

APPENDIX I

Estado Libre Asociado de Puerto R'co
TRIBUNAL GENERAL DE JUSTICIA
Tribunal
Sala de ~~TRIBUNAL SUPERIOR~~

SALA [illegible]

EPIFANIA PEREZ CUZMAN
Demandante

Vs.

BASILIO VEGA VEGA Y OTROS
Demandado

Civil Núm. 76 2974 ACCION CIVIL

Sobre:

~~ACCION CIVIL~~

ORDEN DE SEÑALAMIENTO

REBELDIA

Se señala la vista de este caso ~~en auxilio~~ para el día 9 de marzo de 1977, a las 9:00 de la mañana en el salón de sesiones 1 de este Hon. Tribunal.

En BAYAMON, P. R. a 26 de enero de 1977

POR ORDEN DEL TRIBUNAL.

Secretario
[illegible] FLORES

Por: ISABEL NAVEDO
Subsecretario

APPENDIX II

Estado Libre Asociado de Puerto Rico
TRIBUNAL GENERAL DE JUSTICIA
TRIBUNAL Superior
Sala de Bayamón

Epifania Pérez Guzmán

Vs.

Basilio Vega Vega Y Luis Santiago Ortega c/p Quiso

CIVIL NUM. 79-2674(504)

SOBRE: Acción Civil (Injunction Posesorio)

NOTIFICACION

Lic. Antonio Cajigas Llamas-Rodríguez Oquendo-Esq. 2B-142,Urb. Severo Quiñones- Carolina,Puerto Rico 00630

Lcda. Carmen I. Navas-Apartado 727-Guaynabo,Puerto Rico 00657

Señores:

Notifico a ustedes que en relación con (1) Moción solicitando que no se emita orden de lanzamiento y otros extremos, radicada por Wilfredo Santiago Ortega c/p Quiso y (2) Moción en oposición a otra, radicada por la parte demandante

el Hon. Juez dictó la Ordenes *que se transcribe a continuación, la cual ha sido archivada en autos en el día de hoy:*

Ordenes:

1- No ha lugar. Notifíquese.

2- Se resolvió.

Notifíquese. A 13 de agosto de 1979.

(Fdo.)José F. Rodríguez Rivera
Juez Superior

Bayamón, *Puerto Rico, a* 16 *de* agosto *de 19*79.

Luis R. Amaral
Secretario

APPENDIX III

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Epifanía Pérez Guzmán, Demandante y recurrida, v. Basilio Vega Vega y Luis Santiago Ortega, Demandado y recurrente.	Núm. R-80-131	Revisión

RESOLUCION

San Juan, Puerto Rico, a 17 de abril de 1980.

A la anterior petición de revisión, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. Los Jueces Asociados señores Rigau y Martín no intervinieron.

Ernesto L. Chiesa
Secretario

APPENDIX IV

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Epifania Pérez Guzmán, Demandante y recurrida, v. Basilio Vega Vega y Luis Santiago Ortega, Demandado y recurrente.	Núm. R-80-131	Revisión

RESOLUCION

San Juan, Puerto Rico, a 22 de mayo de 1980.

A la solicitud de retención de mandato, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. El Juez Presidente señor Trías Monge y los Jueces Asociados señores Rigau y Martín no intervinieron.

Ernesto L. Chiesa
Secretario

APPENDIX V

Estado Libre Asociado de Puerto Rico
TRIBUNAL GENERAL DE JUSTICIA
Tribunal Superior
Sala de Bayamón

EPIFANIA PEREZ GUZMAN

VS

BASILIO VEGA VEGA Y OTRO

Civil Núm. 76-2974 *505*

Sobre: Acción Civil
Injunction Posesorio

O_R_D_E_N

Vista la moción radicada por la parte demandada en el caso de epígrafe sobre **Moción Informativa y solicitud de paralización de Orden de Lanzamiento**

el Tribunal resuelve NO HA LUGAR.

Regístrese y notifíquese.

Bayamón, Puerto Rico, a 4 de junio de 19 80.

(Fdo.) Enrique Rivera Santana
Juez Superior

APPENDIX VI

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Epifanio Pérez Guzmán Demandante apelada v. Basilio Vega Vega y Luis Santiago Ortega Demandado apelante	Núm. 0-79-598	Apelación procedente del Tribunal Superior, Sala de Bayamón, Hon. Juan José Ríos Martínez, J. Acción Civil

RESOLUCION

San Juan, Puerto Rico, a 20 de diciembre de 1979.

Al anterior escrito de apelación, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. El Juez Asociado señor Rigau no intervino.

Ernesto L. Chiesa
Secretario

APPENDIX VII

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Epifania Pérez Guzmán Demandante y recurrida v. Basilio Vega Vega y Luis Santiago Ortega Demandado y recurrente	Núm. R-80-131	Resolución de Enrique Rivera Santana, J., Sala de Bayamón Revisión

RESOLUCION

San Juan, Puerto Rico, a 12 de junio de 1980.

A la anterior moción de reconsideración, no ha lugar y a la moción solicitando traducción de documentos, no ha lugar.

Lo acordó el Tribunal y certifica el señor Secretario.

Ernesto L. Chiesa
Secretario

APPENDIX VIII
RULES OF CIVIL PROCEDURE

Rule 4.2:
Similar to Rule 4(b) of Federal Civil Procedure:

El emplazamiento deberá ser firmado por el secretario, llevará el nombre y sello del tribunal con especificación de la sección y sala, y los nombres de las partes; se dirigirá al demandado; hará constar el nombre, dirección y teléfono del abogado del demandante, si lo hubiere, o en su defecto la dirección del demandante, y el plazo dentro del cual estas reglas exigen que comparezca el demandado, apercibiéndole que de así no hacerlo podrá dictarse sentencia en rebeldía en su contra concediendo el remedio solicitado en la demanda.

Rule 4.4:
Similar to Rule 4(d) of Federal Civil Procedure:

El emplazamiento en la demanda se diligenciará conjuntamente. El demandante proporcionará a la persona que haga el diligenciamiento las copias necesarias. Dicha persona, al entregar la copia del emplazamiento, hará constar al dorso de aquella sobre su firma, la fecha y el lugar de dicha entrega y el nombre de la persona a quien se hizo la misma. El diligenciamiento se hará de la manera siguiente:

(a) A una persona mayor de edad, entregándole copia del emplazamiento y de la demanda, a ella personalmente, o a un agente autorizado por ella o designado por ley para recibir emplazamiento.

Rule 8.1:
Similar to Rule 10(a) of Federal Civil Procedure:

Toda alegación tendrá un encabezamiento en el que se consignará el nombre del tribunal, con especificación de la sección y sala, el título del pleito, el nmero de presentación y su denominación de acuerdo con la Regla 5.1. En la demanda, el título del pleito incluirá los nombres de todas las partes; pero en las demás alegaciones será suficiente exponer el nombre del primer litigante de cada parte con una referencia demostrativa de la existencia de otras partes.

Rule 10.1:
Similar to Rule 12(a) of Federal Civil Procedure.

Un demandado deberá notificar su contestación dentro de veinte (20) días de habérsele entregado copia del emplazamiento y de la demanda. Si el emplazamiento se hiciere conforme a lo dispuesto en la Regla 4.5, el demandado deberá notificar su contestación dentro de los treinta (30) días de haberse publicado el edicto. La parte a la cual se notifique una alegación que contenga una demanda contra coparte en su contra, notificará copia de su contestación a la misma dentro de diez (10) días de habersele sido notificada.

Rule 45.1:
Equivalent to Rule 55(a) of the Federal Rules of Civil Procedure.

Cuando una parte contra la cual se solicite una sentencia que concede un remedio afirmativo haya

dejado de presentar alegaciones o de defenderse en otra forma segn se dispone en estas reglas, y este hecho se pruebe mediante declaración jurada o de otro modo, el secretario anotará su rebeldía.

El tribunal a iniciativa propia o a moción de parte podrá anotar la rebeldía a cualquier parte conforme a la Regla 34.2 (b) (3).

Dicha anotación tendrá el efecto de que se den por admitidas las aseveraciones de las alegaciones afirmativas, sujeto a lo dispuesto en la Regla 45.2(b).

La omisión de anotar la rebeldía no afectará la validez de una sentencia dictada en rebeldía.

Rule 49.2:
Similar to Rule 60(b) of the Federal Rules of Civil Procedure.

Mediante moción y bajo aquellas condiciones que sean justas, el tribunal podrá relevar a una parte o a su representante legal de una sentencia, orden o procedimiento por las siguientes razones:

(1). . .

(3) Fraude (incluyendo el que hasta ahora se ha denominado intrínseco y también el llamado extrínseco), falsa representación u otra conducta impropia de una parte adversa;

(4). . .;

(5). . .;

(6). . .

. . . Esta regla no limita el poder del tribunal para (a) conocer de un pleito independientemente con el propósito de relevar a una parte de una sentencia, orden o procedimiento; (b) conceder un remedio a una

parte que en realidad no hubiere sido emplazada; y (c) dejar sin efecto una sentencia por motivo de fraude al tribunal.

. . .